RECENT IMPORTANT DECISIONS

ABATEMENT AND REVIVAL—PENDENCY OF ANOTHER ACTION GROUND FOR DISMISSAL.—Plaintiff brought an action in B county to recover damages as the result of a collision between his truck and defendant's automobile. The defendant had previously brought an action in P county, where he resided, against the plaintiff, for damages arising out of the same collision, which action was pending when the latter was begun. Defendant filed a plea setting up the pendency of his own action in P county and moved to dismiss plaintiff's action. Motion denied. Defendant appealed. *Held,* the action should have been dismissed. *Allen* v. *Salley* (N. C., 1919), 101 S. E. 545.

The court rested their decision upon the supposition that only one cause of action existed, as there was only one transaction. If this be conceded the conclusion reached by the court is logical. It is a well settled general principle of the law that the pendency of a prior action for the same cause, between the same parties, in a court of competent jurisdiction, will abate a later action in the same court or in another court of the same jurisdiction. 1 CORPUS JURIS 45; *N. Y. Mut. Life Ins. Co.* v. *Harris,* 96 U. S. 588, 24 L. ed. 737; *Spencer* v. *Johnston,* 58 Neb. 44, 78 N. W. 482. In some jurisdictions this doctrine is expressly recognized by statute. Ga. Civ. Code, sec. 4431; N. Y. Civ. Code Proc., sec. 498; Minn. Rev. Laws (1905) sec. 4128. But these decisions and statutes contemplate the identity of the actions and not separate and distinct actions. Such provisions do not change the existing rules for determining the identity of causes of action. *Paige* v. *Wilson,* 8 Bosw. (N.Y.) 294; *Julian* v. *Pitcher,* 2 Duv. (Ky.) 254. In the principal case part of the argument is based upon the assumption that there was only one action. But although there was only one transaction, one collision, it does not necessarily follow that only one cause of action arose. A separate and distinct cause of action might arise to each party. Either party might sue. *Bell* v. *Hansley,* 48 N. C. 131. That this objection was not wholly unobserved by the court is shown by the repeated references in the opinion of the principal case, to the doctrine of counterclaims, citing *Francis* v. *Edwards,* 77 N. C. 275, as holding that "a counterclaim is a distinct and independent cause of action." But if either party might sue because of the collision, and if the other might file a counterclaim, which is a "separate and distinct cause of action," then there must exist two separate actions, which are not identical. It seems therefore that the court went astray in their argument and the authorities that they cite. The result of this decision might properly have been reached under a statute requiring consolidation of such actions. There would then have been a consolidation and not a dismissal. A dismissal might also have been had under a statute forfeiting counterclaims when not pleaded as such. See Laws of Utah (1907), sec. 2970; Montana Revised Code (1907), sec. 6547. No such statutes appear to exist in North Carolina.